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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,892	07/15/2003	Jessica Elizabeth LeMay	460.2221USQ	7326

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EXAMINER
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ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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04/29/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/619,892

**Applicant(s)**

LEMAY ET AL.

**Examiner**

Lynne Anderson

**Art Unit**

3761

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date 1/9/08
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9 January 2008 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 11-45 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 11-13, 16, and 44 are rejected under 35 U.S.C. 102(b) as being anticipated by Voss (4,361,150).

5. Voss discloses a tampon applicator assembly comprising a barrel 12, a plunger 13, and a pledget H, as shown in figure 1. The barrel 12 has an insertion area with an insertion tip 20, a finger grip area 18, and a tapered main section 15 therebetween. The tapered main section 15 has a maximum outer dimension located closer to the finger

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grip area 18 than the insertion tip 20, as shown in figure 1, and described in column 4, lines 15-19. The finger grip area 18 may be defined to include up to 25% of the distal end of the barrel 12, and therefore the maximum outer dimension of the tapered main section 15 will be located from the insertion tip 20 about 75% of the overall length of the barrel 12. The insertion tip 20 comprises a plurality of petals 19, as shown in figure 1. The tapered main section 15 is tapered linearly from the maximum outer dimension to the insertion tip area 17, as shown in figure 1, and described in column 4, lines 15-19.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 14-15, 17-24, 26-33, 35-40, 42-43, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (4,361,150).

8. With respect to claims 14-15, 21-24, 26, 33, 40, and 45, Voss discloses all aspects of the claimed invention with the exception of the taper ratio being about 1.08 to about 1.13. Voss discloses the main section being tapered, as described in column 4, lines 15-19, but remains silent as to the degree of the taper. The taper of the barrel of Voss is shown in figure 1 as being very gradual. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the applicator barrel of Voss with a taper ratio of about 1.08 to about 1.13 to provide a gradual taper to the barrel.

9. With respect to claims 17-18, 29-32, and 42-43, Voss discloses all aspects of the claimed invention with the exception of the insertion tip having a taper ratio of between about 0.7 and 0.9. Voss discloses the insertion tip is tapered at an angle of about 90°, as described in column 4, lines 33-45, but remains silent as to the ratio of the taper. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the insertion tip area of Voss with a taper ratio between about 0.7 and 0.9, in order to provide a taper having an angle of about 90°.

10. With respect to claims 19-20, 27-28, and 35-39, Voss discloses all aspects of the claimed invention with the exception of the petal length-to-width ratio being over about 2. Voss discloses the petals having a length greater than their width, as shown in figure 1, but remains silent as to the exact dimensions of the petals. Voss further discloses in column 4, lines 33-45, the length-to-width ratio of the petals must be sufficiently long to provide the insertion end area with a taper having an angle of about 90°. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the petals of Voss with a length-to-width ratio of greater than about 2, in order that the petals having a length sufficient to provide the the insertion end area with a taper having an angle of about 90°.

11. Claims 25, 34, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Voss (4,361,150) in view of Linares et al. (6,264,626).

12. Voss discloses all aspects of the claimed invention with the exception of the finger grip having a gripping region having an outer dimension that is 10% to 30% smaller than the outer dimension of the first and second regions of the finger grip.

13. Linares teaches a tampon applicator having a barrel comprising a finger grip, as shown in figure 1. The finger grip comprises a first region 61, a second region 60, and a gripping region 62 therebetween. The first and second regions 60 and 61 each have an outer dimension about 15-25% larger than the gripping region 62, as described in column 3, lines 56-68. The finger grip of Linares provides an area for securely holding the barrel during insertion of a tampon, as disclosed in column 3, lines 34-41.

14. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the tampon applicator of Voss with the finger grip taught by Linares in order to provide an area for securely holding the barrel during insertion of the tampon.

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents 4,846,802 and 5,158,535 disclose tampon applicators having tapered barrels.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

cla

/L. A./

Examiner, Art Unit 3761

/Nicholas D Lucchesi/

Supervisory Patent Examiner, Art Unit 3763